

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

MRS. KATHY PRITCHARD AND
WAYNE PRITCHARD,

Plaintiffs,

v.

NO. 1:92CV119-S-D

PROVIDENT LIFE AND ACCIDENT
INSURANCE COMPANY,

Defendant.

OPINION

In June, 1993, this court denied plaintiffs' motion for summary judgment because it could not "say that plaintiffs [were] entitled to judgment as a matter of law." At that time, the court invited the parties to consider submitting this case for a decision on stipulated facts and legal argument. The parties agreed to this suggestion, and all memoranda having been presented, the case is now in a posture for a ruling.

FACTS

On March 21, 1991, plaintiff Kathy Pritchard was diagnosed by Dr. Andrew Kellum as having acute myeloid leukemia. By April 24, 1991, Kathy's leukemia was in remission, i.e., there was an absence in the blood or bone marrow of morphologic signs of leukemia. Kathy remained in remission until January 21, 1992.

Plaintiff Wayne Pritchard began working at Maben Frame Mill on July 10, 1991. Maben Frame insured its employees and dependents through a group medical insurance policy issued by defendant Provident Life and Accident Insurance Company. Provident fixes July 10 as the Pritchards' effective date of coverage.¹ The parties agree that the policy qualifies as an ERISA plan. Wayne's employment with Maben Frame continued without interruption until June 26, 1992, when he was discharged.

Between April 24, 1991, and January 21, 1992, Dr. Kellum saw Kathy on May 8, 1991; May 14, 1991; June 12, 1991; July 11, 1991; August 12, 1991; August 27, 1991; November 6, 1991; and January 3, 1992. For the most part, these visits consisted of Dr. Kellum's "interview[ing] [Kathy] as far as any symptoms or problems that she might be having," "do[ing] a limited physical examination," "review[ing] her blood counts," and "look[ing] at the blood under the microscope" to determine whether she remained in remission. The only deviations from this routine occurred in May, when Kathy underwent a bone marrow examination and consolidation chemotherapy,² and August, when she underwent a lumbar puncture.

¹Plaintiffs calculate the effective date of coverage as October 10, 1991, based on provisions in the policy which provide, in pertinent part, that "[e]mployees are eligible to participate on the date of completion of three months of active service."

²According to Dr. Kellum, consolidation chemotherapy is "the administration of chemotherapy to a patient with acute leukemia which is in remission" for the purpose of "decreas[ing] the risk

On January 22, 1992, Kathy was again hospitalized for treatment of her leukemia. On that occasion, she remained in the hospital until February 13, 1992, at which time her leukemia had again entered remission. Approximately three months later, however, the leukemia had returned; and in July, 1992, Kathy received a bone marrow transplant.

Initially, Provident paid certain medical bills incurred by Kathy during the January-February, 1992, hospitalization³ but thereafter denied coverage "because the illness for which said medical treatment was rendered began prior to July 10, 1991, the effective date of Plaintiffs' coverage under the policy." According to defendant, treatment for a pre-existing illness is specifically excluded by the following policy provision: "No benefits will be paid for charges for an...Illness⁴ which began prior to the effective date of a person's coverage...." The Pritchards then filed this action, seeking indemnification for all medical expenses incurred during the January-February hospitalization and a declaratory judgment requiring indemnification for all future medical bills.

of leukemia recurring."

³The total medical expenses incurred during this time were \$74,788.59.

⁴"Illness" is defined in the policy as "[s]ickness or disease, including a mental disease, which requires treatment by a Physician."

DISCUSSION

In support of their position that they are entitled to payment for Kathy's medical expenses associated with her illness, the Pritchards argue that the policy excepts them from the pre-existing condition provision. The subject exception states:

This [pre-existing condition] exclusion will not apply after the earlier of:

(a) the end of any 3 month period, beginning after the...Illness occurs and ending after a person has been covered under the Plan, during which: (i) no diagnosis is made or treatment is received; or (ii) no Covered Expenses⁵ are incurred for care of the...Illness....

The Pritchards maintain there was indeed a three-month period between April, 1991, and January, 1992, when Kathy was neither

⁵The policy defines "Covered Expenses" as the "items of expense for which major medical benefits may be paid...." Included within the list of covered expenses are the following:
Physicians' fees for:
(a) medical care and surgical operations....

* * *

Charges by licensed medical personnel, operating within the scope of their license, for:

(a) diagnostic x-ray and laboratory services required for the investigation of specific symptoms and/or complaints;

* * *

(d) use of x-ray, radium and other radioactive substances for treatment.

* * *

Drugs and medicines which can be legally obtained only by the written prescription of a Physician and which are approved by the U.S. Food and Drug Administration for general use by humans.

diagnosed with nor treated for leukemia or that she did not incur any covered expenses for the care of the leukemia. They base their argument on Dr. Kellum's testimony that the care he provided to Kathy following her first period of remission was not diagnostic and was not treatment as he defined those words. Provident counters that "there was no three month 'window'...during which Mrs. Pritchard failed to see her physician in order to monitor her acute myeloid leukemia," and even without regard to the classification of the doctor's care, the fact remains that Kathy did continue to incur "covered expenses" in connection with her illness.

The court does not believe that it must resolve the meanings of "diagnosis" and "treatment," neither of which is defined in the policy, because there is no three-month period between April, 1991, and January, 1992, when Kathy did not incur "covered expenses" for the care of her illness. In his deposition, Dr. Kellum acknowledged that following her April, 1991, discharge from the hospital, Kathy "continue[d] to remain under [his] care as [his] patient[.]" Under this policy, the term "covered expenses" includes a doctor's fees for medical care. Although Dr. Kellum may not have considered what he did for Kathy during remission to be "treatment" or believed she incurred expenses for the "treatment of leukemia itself," he could not dispute the fact that Kathy did incur expenses for his "following and monitoring" the remission.

Therefore, the court finds that Provident, as the claims fiduciary, did not abuse its discretion by denying the Pritchards benefits under the subject policy.⁶

An appropriate final judgment shall issue.

This _____ day of October, 1994.

CHIEF JUDGE

⁶The policy gives Provident "final discretionary authority to determine eligibility for benefits or to construe the terms of the plan for claims purposes only."